IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.297 OF 2006
IN
CRIMINAL APPEAL NO.285 OF 2006

Hausalaprasad Dhanesh Dusad
and Anr. ...Applicants.

Versus

The State of Maharashtra ...Respondent.

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Mr.Chetan Bane, Advocate for the Applicants.
Mr.A.S.Gadkari, APP, for the State.

. . .

CORAM : D.G.DESHPANDE AND
SMT.V.K.TAHILRAMANI, JJ.

DATED : APRIL 21, 2006.

ORAL ORDER (PER Smt.TAHILRAMANI,J.)

. Heard Mr.Bane learned Advocate for the applicants and Mr.Gadkari learned APP for the State.

2. The applicants have been convicted under Section 302 of IPC by the learned Sessions Judge, Thane. The applicants are now seeking bail.

3. It is the prosecution case that the deceased Harichand had entered into the house of the applicants and had rushed out taking a bag from the house of the applicants. Hence the applicants and some others assaulted Harichand with fist blows and kick blows. On account of the said blows, Harichand was injured. He was taken to hospital. However, he died on the next day on account of ‘cardio-respiratory failure, due to haemorrhagic shock, due to blood trauma to abdomen, chest-wall and skull’.

4. The learned Advocate for the applicants has submitted that both the applicants were on bail during the trial and they have not mis-used the liberty granted to them. This statement has not been controverted by the prosecution.

5. The learned Advocate for the applicants has further submitted that the case would not fall under Section 302 of IPC, but, it would at the most fall under Section 304(ii) of IPC. He has

submitted that it was the deceased Harichand who had entered into the house of the applicants and deceased Harichand had rushed out of the house with a bag belonging to the applicants. The learned Advocate for the applicants has further submitted that as the deceased had tried to rob the applicants and was rushing-away with the stolen property, the applicants exercised their right of private defence. Moreover, he has submitted that both the applicants have only assaulted the deceased by fist blows and kick blows and from their act no intention can be gathered to cause death nor knowledge that their acts would result in death can be gathered. Thus, he has submitted that the case at the most falls under section 304(ii) of IPC.

6. Looking to the evidence on record, we find much merit in the submission made by the learned Advocate for the applicants. In this view of the matter, we are inclined to grant bail.

7. Both the applicants be released on bail in

the sum of Rs.15,000/- (Rs.Fifteen Thousand Only) each, with one or two sureties to make-up the said amount. Both the applicants shall report once in a month at Bhainder Police Station, till the disposal of their Appeal.

8. Application is disposed of.

(D.G.DESHPANDE, J.)

(SMT.V.K.TAHILRAMANI,J.)